PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) EMT-003

	Application Number 10/081,411-Conf. #1565	Filed February 20, 2002
	First Named Inventor Avner Schneur et al.	
	Art Unit 3627	Examiner M. A. Shaawat

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
      Note: No more than five (5) pages may be provided.

I am the

☐ applicant /inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b)
is enclosed.   (Form PTO/SB/96)

☐ attorney or agent of record.

   Registration number _____

☒ attorney or agent acting under 37 CFR 1.34.

   Registration number if acting under 37 CFR 1.34. __50,389__

/Robert S. Blasi/
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August 23, 2007
_____
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of ___1___ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S):   Schneur et al.

APPLICATION NO.:   10/081,411   ART UNIT: 3627

FILING DATE: February 20, 2002 EXAMINER: Shaawat, Mussa

TITLE: Auction Management with Business Volume Discount

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Commissioner for Patents
P.O. Box 1450
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COMMENTS ACCOMPANYING REQUEST
FOR PRE-APPEAL BRIEF CONFERENCE

In response to the Office Action mailed on February 26, 2007, we respectfully submit these Comments:

Remarks begin on page 2 of this paper; and

Conclusion begins on page 5 of this paper.

In accord with the Official Gazette Notice of July 12, 2005, this paper accompanies a Pre-Appeal Brief Request for Review, a Notice of Appeal, a Petition for Extension of Time, and the fee for the filing of the Notice of Appeal.

Please charge our Deposit Account No. 07-1700 in the amount of $760.00 to cover the fees set forth in 37 CFR 1.17(a)(3) and 37 CFR 41.20(b)(1). The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 07-1700, under Order No. EMT-003.

REMARKS

The Cited Art Neither Teaches Nor Suggests Bids or Auction Solutions using Explicit Business Volume Discounts

The cited art fails to teach or suggest two essential elements of pending independent claims 1 and 8. Accordingly, we submit the rejection of those claims over U.S. Patent Application Publication No. 2003/0033236 to Davenport et al. (hereinafter "*Davenport*") in view of U.S. Patent Application Publication No. 2003/0088494 to Lee (hereinafter "*Lee*") is improper and that claims 1 and 8, and the claims that depend therefrom, are allowable.

Independent claims 1 and 8 both recite, in part, "receiving, from a candidate supplier, an explicit offer of a business-volume discount" and "determining by a processor an optimal award schedule comprising an optimal combination of suppliers and a list of items to be ordered from each supplier … utilizing the explicit offer of a business volume discount" (emphasis added). We respectfully submit that neither *Davenport* nor *Lee* teaches or suggests a supplier to an auction explicitly offering a business-volume discount or an optimal solution to the reverse auction problem utilizing explicit offers of a business-volume discount.

In overview, the present invention relates to "a computer-implemented method for determining an optimal award schedule for at least partial satisfaction of [a] requisition." Application at pg. 3, ln. 9–10. A prospective buyer specifies constraints that prospective suppliers are invited to satisfy. Id. at pg. 8, ln. 18–23. The buyer's constraints may include traditional price terms, such as a maximum price per item, but they may also include non-price terms such as time to satisfaction, warranties, and quantity. Id. at pg. 17, ln. 25–pg. 18, ln. 4.

In particular, embodiments of the present invention allow prospective suppliers to submit bids that include an explicit offer of a business volume discount. FIG. 17 and the associated description in the specification describe one example of a bid having an explicit business volume discount at different volume levels. Id. at pg. 22, ln. 5–9.

Davenport describes how potential suppliers participating in a procurement auction bid on items or combinations of items requested by a potential buyer. *Davenport* at ¶ 36. The bids are then placed into an array representation suitable for solution by a commercial linear programming/integer programming (LP/IP) solver. Id. at ¶ 40. The result is a solution to the "winner determination" problem that includes a set of bids such that each item is included in at

least one winning bid. <u>Id. at ¶ 36.</u> The system can structure the solution to limit the minimum and maximum number of winning suppliers; the minimum and maximum total quantity allocated to each supplier, and the reservation prices on each lot. <u>Id. at ¶ 68–70.</u>

The text in *Davenport* cited in the Office Action as relating to supplier offers of business volume discount have nothing to do with a supplier bid mechanism. Instead, paragraphs 64–73 of *Davenport* discuss the automated formulation of a mathematical algorithm that may be used to solve the reverse auction problem and the imposition of constraints on that solution including a minimum and maximum number of winning suppliers; a minimum and maximum total quantity allocated to each supplier, and reservation prices on each lot.

Indeed, *Davenport* fails to disclose any mechanism that allows a potential supplier to <u>explicitly</u> specify a business volume discount associated with a bid. Instead, *Davenport* discloses a randomly-generated set of data purportedly used to test the difficulty of solving the winner determination problem where the data set generated implicitly included a volume discount:

> This particular instance was generated randomly. For each supplier, a set of lots the supplier was interested in was generated, and a set of bids for different subsets of this set were also generated. <u>A single bundled bid for a set of lots S would be for a lower price than that of the sum of the prices of any set of bids by the same supplier, which also, in total, covers all the lots in S</u>.

¶75 (emphasis added). The generation of a hypothetical data set is not a mechanism that allows a potential supplier to explicitly specify a business volume discount associated with a bid.

The Office Action on its face continues to concede that *Davenport* does not meet the element requiring "determining by a processor an optimal award schedule comprising an optimal combination of suppliers and a list of items to be ordered from each supplier … utilizing the explicit offer of a business volume discount." The *Lee* reference does not cure this deficiency. In fact, in contrast to both *Davenport* and the applicants' invention, *Lee* requires a buyer to <u>manually evaluate</u> the submitted sell bids "to select ones that meet the buyer's need best" (emphasis added) <u>*Lee* at ¶ 31.</u> <u>See also ¶¶ 30, 32.</u> In contrast, both *Davenport* and the applicants' <u>claimed</u> invention provide <u>computerized methods</u> for evaluating submitted bids.

The rejection of independent claims 1 and 8 is based on *Davenport* and *Lee* in combination, and the preceding discussion demonstrates how the cited art fails to satisfy at least two essential elements of these claims. For these reasons, we respectfully submit that the

rejection of independent claims 1 and 8 over the cited art is clear error and we request the withdrawal of these rejections. The remaining claims, which depend therefrom, are therefore allowable.

CONCLUSION

In light of the foregoing, we respectfully submit that there are clear errors in the Examiner's rejections and that the Examiner has failed to consider essential elements of the independent claims in the present rejection.

Respectfully submitted,

Date: August 23, 2007

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